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Property Rights: A city's limits

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The Washington Supreme Court could add some clarity to the law regarding government condemnation of properties. Better yet, the court might even provide individuals greater protection against unfair uses of government's power to condemn and take homes and businesses.

A court panel could decide as early as Tuesday whether it will hear an appeal from the Strobel family, owners of the land and building for a long-time Burien restaurant, Meal Makers. The case turns on how much power courts have to review municipal decisions to condemn private property.

A King County Superior Court judge and a state appeals court have sided with the city. But Superior Court Judge Michael Heavey laid out the issues, suggesting in a thoughtful oral decision last year that the city action might have been so "unnecessary and unreasonable as to be oppressive."

Heavey said the case record suggests the city and a private partner in a planned town center think "Meal Makers is inconsistent with their vision of what should happen there. I think they would feel it would be akin to having a Denny's restaurant next to the Capitol building in Olympia." Evidence from one source claims the city manager ordered staffers to "make damn sure" a road would go through the restaurant property. Nevertheless, Heavey found that recent precedents made courts defer to the city's judgment except in rare cases where fraud can be proved.

As lawyers from the Institute for Justice argue in the Strobels' behalf, Heavey pointed out an earlier strand of legal analysis holding that bad faith or abuse of power can be grounds for a court to stop condemnation. If there's truth to reassurances about the right to keep a home or business here, the court will want to consider the important issues in the case.

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In Burien, a well-aimed road tests property rights

Puget Sound Business Journal (Seattle) - by Michael Bindas

Suppose the folks at city hall didn't think your property fit their vision for the future, so they made damn sure to run a road through what is rightfully yours. You fought them in court and the judge said he thought the city's conduct might be "oppressive" and an "abuse of power," but then ruled there was nothing he could do about it.

That's the situation for seven sisters in Burien. The Strobel sisters inherited a piece of property from their parents. For a quarter century, the family has leased the property to Meal Makers, a diner-style restaurant loved by Burien's locals.

The city, however, has a different vision for the property. It intends to turn the area around Meal Makers into a fancy Town Square development, complete with upscale condos, shops and restaurants. Out with what makes a city unique; in with the same homogeneous stuff you find everywhere else.

Cognizant of their political well-being, Burien's bureaucrats recognized the possible backlash if they simply condemned the property and handed it over to the Los Angeles developer they hired to build Town Square. After all, most people believe that using eminent domain for private development is wrong, notwithstanding the green light the U.S. Supreme Court gave to such abuse in last year's Kelo decision. So the city got crafty: It decided to plan a road through the Meal Makers building. To be precise, the city manager instructed his staff to "make damn sure" a road went through the building, as a staff member later testified. No one could dispute that a road is a public use for which eminent domain is authorized, right?

The staff drew up the plan. When a subsequent survey revealed that the road would only sideswipe the property and not impact the restaurant itself, they returned to the drawing board. This time they got the road -- you guessed it -- right through the building. Then the city condemned it.

Surely there's something in Washington law that prevents the deliberate targeting of property simply because it isn't upscale enough for the government's liking ... isn't there?

In theory, there is. Even when a condemnation is for a public use, like a road, Washington law requires the government to prove that the property it's condemning is "necessary" for the

public use.

On that basis, the Strobels challenged the condemnation. They argued that property isn't "necessary" for a road if the government has to make "damn sure" to target it, then reconfigure the road until it goes right through the front door.

A King County Superior Court judge seemed to agree. He found that the road alignment "could have been easily accomplished without affecting the Meal Makers restaurant or the Strobel property." He summarized the city's uppity attitude as "you won't sell and you don't fit our vision, so we're going to put a street right through your property and condemn it." He even suggested the city's behavior might be "oppressive" and an "abuse of power."

Nevertheless, he ruled against the sisters.

Why?

Because, in Washington, the law assumes your property is "necessary" for a government enterprise unless you can prove the government engaged in "fraud" when it decided to take the property. That is a ridiculously deferential -- and virtually insurmountable -- standard. The property owner essentially has to prove the government lied. Good luck.

The Strobel sisters appealed, to no avail, and are now asking the Washington Supreme Court to review their case. The court will decide on Dec. 5 whether to accept review.

The Strobels' request of the court is modest: to hold that property doesn't become "necessary" to the government simply because government makes "damn sure" to take it. The Supreme Court should empower judges to protect the rights and property of citizens from this kind of government abuse.

MICHAEL BINDAS is a staff attorney at the Institute for Justice Washington Chapter in Seattle, which represents the Strobels.

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Burien condemns property in eminently unfair manner

ROBIN OLDFELT

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When my mom and dad left a small piece of property in downtown Burien to my six sisters and me, they left us a part of their American Dream.

Apparently the City of Burien doesn't think Mom and Dad, who raised seven Strobel girls in South Tacoma, dreamed big enough. The property's use as a family-style restaurant is too lowbrow for the city's taste, so the city is using eminent domain to get rid of it.

While this fight may have started in Burien, its outcome will have major implications for anyone who owns a piece of property in this state. Our case, which the state Supreme Court is now considering whether to review, will decide whether government can take your property even if it doesn't need it.

The property, which our family leases to a popular restaurant called Meal Makers, has been in the family for 27 years. During that time, through thick and thin, we stuck it out. We've paid our taxes and invested in the community. Meal Makers has been equally dedicated. It has remained open, serving the community through good times and bad.

Now City Hall wants to reshape Burien's image – at our expense. Our family's property doesn't fit the city's "vision" for a new commercial and residential development project, so the city is using its power of eminent domain to take the property away from us.

The city claimed it needs the property for a road. The fact is it doesn't need the property at all; it deliberately manipulated its plans so that a road would run through it. As we learned in court when we challenged the condemnation, the city manager told his staff to make "damn sure" the road went through the Meal Makers building. His staff and the city's developer then worked hand in hand to make that happen.

Don't take our word on this. Take the word of the King County Superior Court judge who heard our case. He said the city's decision to condemn our family's property "can be summarized as follows: you won't sell, and you don't fit our vision, so we're going to put a street right through your property and condemn it."

Still, the judge felt that Washington law required him to uphold the condemnation. Despite his concern that the city's conduct might be "oppressive" and an "abuse of power," he allowed the city to take our property.

It's frustrating enough that, after years of commitment to Burien, we're being shown the door. What's even more frustrating is that it's happening simply because the city government doesn't think we're upscale enough.

Again, you don't have to take our word on this; take the judge's. In his opinion, the city and its developer "just feel that Meal Makers is inconsistent with their vision" and that allowing it to stay "would be akin to having a Denny's restaurant next to the Capitol building in Olympia."

If this can happen to our property in Burien, it can happen to your home or business anywhere in the state. If our courts allow this kind of arbitrary use of government power, then every working-class neighborhood in Washington is in danger.

I can only imagine what our mom and dad would think of all this. They grew up during the Great Depression. Dad was drafted and served in the Navy during World War II, though he had four daughters, 6 years old and younger, at the time.

Our parents worked hard and sacrificed to provide for their family; they dreamed about leaving a legacy for their daughters and grandchildren. Now the City of Burien wants to take their dream away.

My sisters and I have asked the state Supreme Court to step in. In early December, the court will decide whether to hear our appeal. We trust the justices will recognize that what's at stake here isn't just one family's struggle to keep its property, but every family's right to pursue, and be secure in, the American Dream.

Robin Oldfelt lives in University Place. This article was distributed by the Institute for Justice, a libertarian public-interest law firm based in Arlington, Va. The institute has played a prominent role in property-rights cases around the nation. The institute's Washington chapter is representing Oldfelt and her sisters in their appeal.

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